



**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION**

SAMUEL SMILEY,	§	
Petitioner,	§	
	§	
vs.	§	CIVIL ACTION NO. 8:21-0543-MGL-JDA
	§	
WARDEN OF LEE CORRECTIONAL	§	
INSTITUTION,	§	
Respondent.	§	

**ORDER ADOPTING THE REPORT AND RECOMMENDATION
AND DISMISSING THE PETITION WITHOUT PREJUDICE
AND WITHOUT REQUIRING RESPONDENT TO FILE AN ANSWER OR RETURN**

Petitioner Samuel Smiley (Smiley) filed this 28 U.S.C. § 2254 petition (the petition) against Respondent Warden of Lee Correctional Institution (the Warden). Smiley is representing himself.

The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting the petition be dismissed without prejudice and without requiring the Warden to file an answer or return.. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may

accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on February 25, 2021, and the Clerk entered Smiley's objections on March 15, 2021.

As detailed in the Report, Smiley

contends he filed a motion for a sentence reduction in the Charleston County General Sessions on June 23, 2016, which was denied. Nevertheless, [Smiley] asserts that the sentencing court has not issued an order in five (5) years, and he cannot appeal or pursue post-conviction relief. For his relief, [Smiley] seeks a hearing before this Court or for the Court to issue an order requiring the State of South Carolina to allow [him] to exhaust his state court remedies.

Report at 1-2 (citations omitted) (internal quotation marks omitted) (alteration marks omitted).

In adjudicating this matter, it is proper for the Court to take judicial notice of Plaintiff's state court criminal and post-conviction relief actions. *See Philips v. Pitt Cty. Mem. Hosp.*, 572F.3d 176, 180 (4th Cir. 2009) (explaining that courts "may properly take judicial notice of matters of public record"). In so doing, the Court notes that, as per Smiley's Court records, the trial court issued an order denying Smiley's motion to reconsider his sentence on June 25, 2021, and Smiley filed his application for post-conviction relief on December 8, 2021. *See* <https://jcmsweb.charlestoncounty.org/PublicIndex/CaseDetails.aspx?County=10&CourtAgency=10001&Casenum=2012A1010900151&CaseType=C&HKey=1208710352719010312053661016573106121881141071061061176712166112113864711911176971101105011690112847210911948> (last visited April 20, 2023).

As such, Smiley has already obtained the relief he seeks here.

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court overrules the objections, adopts the Report, and incorporates it herein. It is

therefore the judgment of this Court that the petition is **DISMISSED WITHOUT PREJUDICE** and without requiring the Warden to file an answer or return..

To the extent Smiley moves for a certificate of appealability, such request is **DENIED**.

IT IS SO ORDERED.

Signed this 20th day of April, 2023, in Columbia, South Carolina.

s/ Mary G. Lewis

MARY G. LEWIS

UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

Smiley is hereby notified of the right to appeal this Order within sixty days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.